

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

BILLY BRANTLEY, et al.

Plaintiffs,

V.

CINERGY CORP.,

Defendant.

Judge Michael H. Watson

Case No. C-01-378

PLAINTIFFS' UNOPPOSED MOTION TO CONTINUE TRIAL

The Plaintiffs, by and through undersigned counsel, respectfully move this Honorable Court to continue the trial set for this case until on or after September 22, 2008. The Plaintiffs also request that pre-trial submissions also be extended commensurate with the new trial date. The case is presently set for a three-week trial beginning on May 5, 2008. As grounds for this motion, the Plaintiffs state as follows:

1. Pursuant to this Court's Minute Entry entered on October 9, 2007, trial for this case is presently set to begin on May 5, 2008. Proposed final pretrial order/jury instructions are due on March 27, 2008. The Final Pretrial Conference is set for April 3, 2008. *See* Minute Entry entered October 9, 2007.
2. The trial will be conducted on behalf of four individuals with multiple claims each. The trial will involve approximately 60 witnesses and scores of exhibits. Although the parties initially anticipated that the trial would take three weeks, the parties now believe that the trial will take at least four weeks based upon the number of witnesses and exhibits.

3. The Defendant does not oppose the Plaintiffs' motion to continue the trial, and there will be no prejudice to the Defendant if a continuance is granted. In addition, the parties desire additional time to pursue a settlement of this matter, particularly in light of the jury's verdict on the claims of two of the plaintiffs in the companion case *Smith, et al. v. Cinergy Corp.* in the Hamilton County Court of Common Pleas.

4. The three Plaintiffs' counsel who are responsible for the trial in this case are responsible for preparing and conducting a two-week trial beginning on June 3, 2008, in the case styled *Bert v. AK Steel*, Case No. 1:02-CV-467 ("*Bert*") before Chief Judge Sandra S. Beckwith in the United State District Court for the Southern District of Ohio in Cincinnati, Ohio. The *Bert* trial date has been set since March 2, 2007. See *Scheduling Order* (Doc. No. 104) entered in the *Bert* case on March 2, 2007. The *Bert* trial involves class claims as well as individual claims and will require extensive preparation which will be severely restricted if the trial in the instant case goes forward on May 5, 2007.

5. Susan Donahue, attorney for the Plaintiffs, has worked extensively on the instant case will be expected to participate in the preparation and conduct of the trial. Ms. Donahue also has a trial set for May or June 2008 in the case styled *Heatherly v. Affinia Group, Inc.*, Case No. 2:07-cv-13084-PJD-RSW before Judge Patrick J. Duggan in the United States District Court for the Eastern District of Michigan in Detroit, Michigan. The precise trial date for this case has not been set. Ms. Donahue has been the primary attorney on this individual case throughout discovery and will be expected to prepare for and participate in conducting this trial. Ms. Donahue also has a trial scheduled to begin on July 22, 2008 in the case styled *C. Lee v. Nucor-Yamato Steel Company LLP, et al.*, Case No. 07-cv-00455-WRW before Judge William R. Wilson, Jr. in the United States District Court for the Eastern District of Arkansas in Little Rock, Arkansas. Ms. Donahue has been the primary attorney on this individual case during discovery and

will be expected to prepare for and to participate in conducting this trial.

6. After consultation with Defendant's counsel regarding their respective schedules, Plaintiffs request a continuance of the trial so that the trial will begin sometime on or after September 22, 2008, proposed final pretrial order/jury instructions will be due on August 13, 2008, and Final Pretrial Conference will be set for August 22, 2008.

WHEREFORE, premises considered, the parties respectfully request that this Court continue this trial until on or after September 22, 2008 with pretrial submissions to be filed as outlined above.

Respectfully submitted, this the 24th day of March, 2008,

/s/Susan Donahue

Robert F. Childs, Jr.

Susan Donahue

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CERTIFICATE OF SERVICE

I hereby certify that on March 24, 2008, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification to:

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